

EXHIBIT C

(March 5, 2020 Verified Complaint)

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5 | Attorney for Plaintiff TUSCAN RIDGE ASSOCIATES, LLC.

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF BUTTE**

10 TUSCAN RIDGE ASSOCIATES, LLC.) CASE NO. 20CV00694
11 Plaintiff,)
12 v.)
13 ECC CONSTRUCTORS LLC., A)
DELAWARE LIMITED LIABILITY)
COMPANY, AND DOES 1-50)
14)
15 Defendants.)
16)

Plaintiff Tuscan Ridge Associates, LLC (“Plaintiff”) alleges as follows:

18 1. Plaintiff is a limited liability company organized and existing under the laws of
19 the State of California, with its principal place of business located in Butte County, California.

20 2. Defendant ECC Constructors LLC (“Defendant”) is a limited liability company
21 organized and existing under the laws of the State of Delaware, doing business within Butte
22 County, California.

23 3. Plaintiff is the owner of real property located in the County of Butte, commonly
24 known as Assessor's Parcel Nos. 040-520-004 through 040-520-011 (hereinafter referred to as
25 the "Real Property"). The Real Property is adjacent to the Skyway, the only road that runs from
26 Chico, California to Paradise, California. The Real Property is approximately six miles east of
27 Chico, and approximately four miles west of Paradise and consists of approximately 160 acres.
28 Exhibit "A" attached hereto and incorporated herein by reference is a true and correct copy of

1 Butte County Assessor's Map, Book 40, Page 52 with the Real Property highlighted in yellow.

2 4. On November 8, 2018, the deadliest and most destructive wildfire in California
3 history occurred in Butte County. This fire has come to be known as the "Camp Fire", due to its
4 place or origin. The Camp Fire destroyed over 18,000 structures, covered an area of 153,336
5 acres and caused 85 fatalities. The towns of Paradise and Concow were nearly completely
6 destroyed, with each losing 95% of all structures. The town of Magalia, located above Paradise,
7 suffered a loss of roughly half of all of its structures.

8 5. Defendant contracted with the California Department of Resources Recycling and
9 Recovery ("Cal Recycle") to remove fire related debris from Paradise at a cost of 359 million
10 dollars.

11 6. Plaintiff does not know the true names of Defendant DOES 1-50, inclusive, sued
12 herein and, therefore, sues such Defendants by those fictitious names.

13 7. Plaintiff is informed and believes, and on that basis alleges, that at all times
14 mentioned herein, Defendants were the agents and/or employees of their co-defendants and, in
15 doing the things alleged in this Complaint, were acting within the course and scope of such
16 agency and/or employment.

17 8. Due to the contract between Defendant and Cal Recycle, ECC was in need of
18 housing for approximately 1,500 to 3,000 workers in order to perform its obligations. As a
19 result, Defendant leased 82.6 acres of the Real Property for a temporary workforce housing
20 complex from Plaintiff. This work camp included 20.1 acres known as the PG & E Base Camp,
21 30 acres known as Base Camp 1 and 32.5 acres known as Base Camp 2. A true and correct copy
22 of the lease, dated March 22, 2019, is attached hereto and incorporated herein by reference as
23 Exhibit "B"

24 9. An amendment to the lease was executed by the parties, a true and correct copy of
25 this amendment is attached hereto and incorporated herein by reference as Exhibit "C".

26 10. Although Defendant leased only a portion of the Real Property (82.6 acres),
27 Defendant has utilized, with the permission of Plaintiff, a majority of the remaining unleased 80
28 acres for the purpose of staging vehicles and equipment without any compensation to Plaintiff.

1 11. Prior to the Camp Fire, Plaintiff had plans to develop the Real Property for
2 housing. These plans would have required Plaintiff to make certain improvements to the Real
3 Property, including the installation of electrical power and a wastewater treatment facility.

4 12. The Lease states that "...Tenant will be paying for the completion of numerous
5 improvements that will permanently benefit the property..." In return, Defendant would receive
6 a partial rent credit. This contract term is referred to as the "Threshold Amount" and described
7 in Exhibits A-1 of the Lease and Exhibit "C."

8 13. The Lease, at Exhibit A - I, provided that either party was entitled to terminate the
9 lease within ten (10) business days to allow each side to investigate certain risks (referred to
10 within the Lease as "Remaining Risks"). In the event that Defendant refused to cover such risks,
11 then either party was entitled to terminate the Lease, relieving each of any obligations.

12 14. The Lease was not terminated, and Defendant agreed to cover certain costs as
13 specified in the Lease and the amendment. These costs included, but were not limited to PG & E
14 work, which was known by the parties to "likely push the costs of Landlord's work over the
15 revised threshold" (See Exhibit "C", page 1, ¶ 3.)

16 15. Within the Lease and amendment, the parties agreed that Defendant would be
17 responsible to cover costs above an amount of \$2,964,800, which is known as the "Threshold
18 Amount."

19 16. Rent payments were to commence in August 2019, the first month following
20 completion of Permanent Improvements. Since ECC agreed to absorb the cost of Landlord's
21 work over the Revised Threshold Amount of \$2,964,800 without an offset in rent, \$1,000,000
22 was required to be paid to Plaintiff and amortized equally over the Lease Term.

23 17. No rent has been paid, and the sum of \$666,666.66 is due and owing as of March
24 1, 2020, with such amounts continuing to accrue at the rate of \$333,333.00 per month.

25 18. The Lease further provides that Defendant is responsible for the installation of
26 permanent power to the Real Property, including but not limited to, advancing payment for the
27 12KV line service and step-down transformers, trenching and installing underground conduit
28 from the 12 KV drop locations to the transformer pads and installing the service to step-down

1 transformers. Defendant is also responsible for advancing the costs and installation of three
2 pole-mounted step-down transformers.

3 19. In furtherance of these obligations, Defendant met with PG & E several times at
4 the site to discuss the plan to bring power to the site and on March 4, 2019, Defendant paid
5 \$5,000 to PG & E to begin the process of getting power to its site. Attached hereto and
6 incorporated herein by reference is Exhibit "D", a true and correct copy of the receipt. This
7 receipt specifies the following:

8
9 "IMPORTANT: By going forward with this project and paying the engineering
10 advance to PG&E you are also agreeing to pay PG&E for all costs PG&E incurs
11 for your project in the event that your project is cancelled, even if the costs
12 PG&E incurs are more than this advance."

13 20. Defendant, however, refused to advance the costs of the permanent power as
14 specified herein. Instead, Defendant provided temporary power to its site via diesel generators.

15 21. As a result of Defendant's breach, there is due and owing the sum of \$684,941.36
16 to PG&E.

17 22. Defendant has received invoices for the wastewater system in the amount of
18 \$220,246.57 on July 31, 2019 and \$346,818.06 on September 24, 2019. Since Defendant has
19 received these invoices, Plaintiff has been forced to incur an additional \$95,964.47 in costs
20 relating to the wastewater system. The Lease specifies that Defendant is required to issue
21 payment within seven (7) days after receipt of Landlord's notice. The foregoing amounts are
22 still outstanding and due to Plaintiff.

23 23. Defendant has incurred additional costs to I-5 Rentals, Inc. and Swan
24 Engineering, totaling \$722,149.60 for work performed on the wastewater system and storage
25 ponds. As a result of Defendant's failure to pay these amounts, the Real Property is now subject
26 to mechanics liens in this amount. Plaintiff has contested the validity of these claims with each
27 provider, however since such works relates to work that Defendant is obligated to cover, such
28 fees are Defendant's responsibility and Defendant is required to pay for the Scheduled
Improvements. Therefore, Defendant is necessarily responsible for these costs.

1 24. Defendant agreed in the Lease that it would install a new left turning lane from
2 westbound Skyway Drive into the northeast corner of the Real Property. In furtherance of this
3 obligation, which was due to be completed within a reasonable time, Defendant commissioned a
4 traffic study in May of 2019. Defendant has taken no further steps to meet its obligations, and
5 has indicated to Plaintiff that it does not intend to complete this promised improvement. It is
6 estimated that it will cost approximately \$1,500,000 to install this left hand turning lane. In lieu
7 of installing the left hand turning lane as required under the Lease, Defendant directed all truck
8 traffic through the property main gate and destroyed the main entrance. The Lease requires
9 Defendant to repair this damage, which is estimated at a minimum of \$600,000.

10 25. In addition to the sums outlined above, Plaintiff is entitled to interest on the
11 unpaid amounts, as specified in the Lease, as well as default interest, and late charges.

12 26. Defendant incurred approximately \$800,000 in sewage costs, owed to Big Valley
13 Pumping. The Lease provides that costs incurred by Defendant in furnishing utility serves after
14 the 45 day deadline to complete the wastewater treatment facility could be offset against Rent or
15 charged to Landlord. However, the Lease also contains a "force majeure" cause which excuses
16 the requirement to have the wastewater treatment facility completed by Plaintiff. Instead, the 45
17 day deadline to install the wastewater treatment facility was extended to June 21, 2019 due to
18 inclement weather. Any costs incurred for Big Valley Pumping's services incurred prior to June
19 21, 2019 are the sole responsibility of Defendant, without offset.

20 27. Additionally, Defendant would not have been able to utilize the wastewater
21 system until Defendant provided the necessary electrical power to the system, which did not
22 occur until July 25, 2019, (and was accomplished via diesel generator). Any pumping that
23 occurred was done due to the fact that Defendant did not perform its obligations under the terms
24 of the Lease.

25 28. The Lease contains an attorneys' fees clause at page 29, paragraph 24.11, of
26 Exhibit 2.

27 29. The Lease further provides that the parties will mediate any disputes. An attempt
28 at mediation occurred on January 7, 2020.

1 30. The lease also contains a provision that specifies that the parties will participate in
2 arbitration. To date, no such arbitration has been scheduled, nor has the case been formally
3 referred to arbitration.

FIRST CAUSE OF ACTION

BREACH OF CONTRACT (AGAINST ALL DEFENDANTS)

31. Plaintiff incorporates herein by reference paragraphs 1-30 as if set forth fully herein.

10 32. Defendant has refused to perform its obligations under the terms of the Lease,
11 including but not limited to, failing to provide permanent power, failure to install the left turn
12 lane, failure to pay costs and rental amounts due and owing as well as interest, default amounts
13 and late fees as specified herein.

14 33. Plaintiff has performed all conditions of the Contract that are required to be
15 performed by Plaintiff.

16 34. Defendant's failure and refusal to perform its obligations under the Contract
17 constituted a breach and damaged Plaintiff in a dollar amount according to proof, which exceeds
18 the minimum jurisdictional limit of this Court.

19 35. The Contract between Plaintiff and Defendant provides for an award of attorneys'
20 fees and costs incurred to enforce the Contract.

21 WHEREFORE, Plaintiff prays for judgment against Defendants as set forth herein below.

SECOND CAUSE OF ACTION

SECOND CAUSE OF ACTION
**BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING
(AGAINST ALL DEFENDANTS)**

25 34. Plaintiff incorporates herein by reference paragraphs 1-35 set forth hereinabove as
26 if set forth fully herein.

27 35. The Contract between the parties gives rise to an implied covenant of good faith
28 and fair dealing. Such covenant requires that each party not do anything to unfairly interfere

1 with the rights of any other party to receive the benefits of the Contract. This covenant also
2 requires that the parties engage in fair dealing with respect to the performance and enforcement
3 of the Contract.

4 36. Plaintiff did all, or substantially all, of the significant things that the Contract
5 required it to do prior to Defendant's unilateral and wrongful breaches.

6 37. All conditions required for Plaintiff's performance under the Contract occurred
7 prior to Defendant's breach.

8 38. Defendant unfairly interfered with Plaintiff's right to receive benefits under the
9 Contract.

10 39. Plaintiff was harmed by Defendant's conduct not only in terms of loss of the
11 funds under the terms and conditions of the Contract, but also due to: 1) Defendant's unilateral
12 refusal to install the left turn lane, and 2) Defendant's failure to install permanent PG & E.

13 WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, as set
14 forth herein below.

THIRD CAUSE OF ACTION
PETITION FOR ARBITRATION
(AS TO ALL DEFENDANTS)

18 40. Plaintiff incorporates herein by reference paragraphs 1-39 set forth hereinabove as
19 if set forth fully herein.

20 41. The Lease provides that in the event that a dispute arose between the parties that
21 such dispute would be resolved by arbitration.

22 42. The Lease is in full force and effect and a dispute has arisen regarding sums owed
23 to Plaintiff as specified herein.

43. Plaintiff has provided a written request to Defendant that it wishes to resolve the
dispute in arbitration and has suggested the arbitrators. Defendant has acknowledged
Petitioner's request and on February 21, 2020 indicated that it would reply as to either arbitrator
suggested by Defendant within one week. As of the filing of this Complaint, Defendant has

1 failed and refused to provide any meaningful response with respect to its selection of an
2 arbitrator or its commitment to attend arbitration.

3 44. Plaintiff has not waived its right to have the dispute resolved by arbitration and
4 no grounds exist for the revocation of the agreement.

5 Wherefore, Plaintiff prays for judgment as set forth below:

6 1. That Defendant corporation, and/or its agents and/or successors-in-interest, pay to
7 Plaintiff monetary damages for all harm suffered by Plaintiff due to Defendant's breach of
8 contract in an amount according to proof;

9 2. For monetary damages in the amount according to proof due to Defendant's
10 unilateral and wrongful breach of the implied covenant of good faith and fair dealing;

11 3. For attorney's fees in an amount determined by the Court to be reasonable as
12 authorized by the Contract and according to proof;

13 4. For an order requiring Defendant to participate in arbitration as provided in the
14 agreement and by law in order to resolve the controversy and dispute between the parties arising
15 out of their written agreement.

16 5. For costs to suit herein; and

17 6. For such other and further relief as the Court deems just and proper.

18

19 Respectfully submitted,

20 **LELAND, MORRISSEY & KNOWLES, LLP**

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22 Dated: March 5, 2020



23 Sara M. Knowles
24 Attorney for Tuscan Ridge Associates, LLC.

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VERIFICATION

I, Scott Bates, am a managing member of Tuscan Ridge Associates, LLC. I have read the Complaint for Breach of Contract, for Breach of the Implied Covenant of Good Faith and Fair Dealing; Petition to Compel Arbitration and verify the contents thereof. I have personal knowledge of the facts therein alleged, except as to those facts alleged on information and belief and, as to such facts, I believe them to be true.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 5th day of March, 2020 at Chico, California.



Scott Bates, Managing Member
Tuscan Ridge Associates, LLC